Supreme Court, U.S.
FILED

041222 MAR 9 - 2005

OFFICE OF THE CLERK

No. 05-___

IN THE

Supreme Court of the United States

WARREN DAVIS, DENNIS LAPSO, ROBERT WICKLINE, AND GREGG SHOTWELL,
Petitioners,

v.

UNITED AUTOMOBILE WORKERS OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

---

PETITION FOR A WRIT OF CERTIORARI

RONALD J. REOSTI
REOSTI, JAMES & SIRLIN, PC
925 Ford Building
615 Griswold Street
Detroit, MI 48226-3988
(313) 962-2770

ELLIS BOAL
Counsel of Record
9330 Boyne City Road
Charlevoix, MI 49720
(231) 547-2626

Attorneys for Petitioners

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

QUESTION PRESENTED

Whether Section 403 of the Labor-Management Reporting and Disclosure Act preempts union members' suit to restore past internal geographic regions of their union to the status quo, where claims are brought solely under the union's constitution and under the free-speech and equal-rights provisions of the L.M.R.D.A., because one result of restoration, among others, would be to honor the results of elections held under the status quo.

PARTIES

All parties are listed in the caption.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
PARTIES	ii
TABLE OF AUTHORITIES	v
OPINIONS BELOW	1
JURISDICTION	2
STATEMENT OF THE CASE	2
A. Statement of Facts	2
B. Proceedings Below (In Michigan)	5
C. Ohio Proceedings	10
REASONS FOR GRANTING THE WRIT	12
I. CERTIORARI SHOULD BE GRANTED TO EXAMINE THE RELATION OF TWO PREEMPTING FEDERAL LABOR STATUTES, AND A CONFLICT WITH THE NINTH CIRCUIT AND THIS COURT	12
II. PETITIONERS' CLAIMS ARE INDEPENDENTLY COGNIZABLE SECTIONS 301(A) AND 101(a)(1) and (2)	18
A. Section 301(a) allows suits on union constitutions without requiring proof of discrimination	19
B. In requiring that discriminatory treatment be shown in a claim under Section 101(a)(2), the free-expression-of-views statute, the decision below conflicts with the statute's literal wording and the holdings of other circuits	21

TABLE OF CONTENTS—Continued

Page

C. Penalizing all the members of Region 2 by dissolving their region because their delegates voted for a certain candidate violated the protection of equal election voting rights under Section 101(a)(1) 22

D. Misleading the delegates about the procedural irregularities leading up to introduction of the amendment on the convention floor deprived them of the right to vote in a meaningful and informed way, in violation of Section 101(a)(1) 24

CONCLUSION 25

APPENDIX A: Court of Appeals' opinion, 12/9/04 .... 1a

APPENDIX B: District Court's opinion and order, 8/1/03 ..... 8a

APPENDIX C: District Court's denial of reconsideration, 11/6/03 ..... 14a

APPENDIX D: Petitioners' second amended complaint, docketed 5/5/03 ..... 15a

APPENDIX E: Court of Appeals' opinion in *Davis v United Automobile Workers*, 392 F.3d 834 12/15/04.. 27a

APPENDIX F: Statutes and regulation involved..... 37a

TABLE OF AUTHORITIES

CASES — Page

Allis-Chalmers v. Lueck, 471 U.S. 202 (1985) 12
Amalgamated Clothing Workers Rank and File Committee v. Amalgamated Clothing Workers of America, Philadelphia, Joint Board, 473 F.2d 1303 (CA3 1973) 16
Bauman v. Presser, 117 LRRM 2393 (CADC, 1984), appeal dismissed as moot, 119 LRRM 2247 (D.C. Cir. 1985) 24
Blanchard v. Johnson, 388 F Supp 208, (N.D. Ohio, 1974), aff'd in relevant part 532 F.2d 1074 (6th Cir. 1970) 24
Calhoon v. Harvey, 379 U.S. 134 (1964) 14, 22, 23
Carpenters Local 48 v. Carpenters, 920 F.2d 1047 (1st Cir. 1990) 20
Carpenters v. Raymond, 145 L.R.R.M. 2331 (D. Conn. 1993) 21
Caterpillar Inc v. Williams, 482 U.S. 386 (1987)... 12
Christopher v. Safeway Stores, 644 F.2d 467 (5th Cir.1981) 23
Davis v. United Automobile Workers, 392 F.3d 834 (6th Cir. 2004)..... 10-13, 18, 27a-36a
Dornan v. Sheet Metal Workers, 640 F. Supp. 418 (E.D. Mich. 1986) 21
Dunlop v. Bachowski, 421 U.S. 560 (1975)..... 14, 15
Electrical Workers v Hechler, 481 U.S. 851 (1987) 12
Finnegan v. Leu, 456 U.S. 431 (1982)..... 21
Franchise Tax Board of the State of California v. Construction Laborers Vacation Trust for Southern California, 463 U.S. 1 (1983)..... 12
Hall v. Cole, 412 U.S. 1 (1973) 21
Harvey v. Hollenback, 113 F.3d 639 (6th Cir. 1997) 20

TABLE OF AUTHORITIES—Continued

Page

Henegar v. Banta, 27 F.3d 223 (6th Cir. 1994) 11, 13
Kahn v. Hotel Restaurant Employees, 469 F. Supp. 14 (N.D. Cal. 1977), aff'd 597 F.2d 1317 (9th Cir. 1979) 21
Lingle v. Norge Division of Magic Chef Inc, 486 U.S. 399 (1988) 12
Local 1 (ACA) Broadcast Employees v. Teamsters, 419 F. Supp. 263 (E.D. Pa. 1976), later decision 461 F. Supp. 961 (E.D. Pa. 1978), on appeal, 614 F.2d 846 (3rd Cir. 1980) 21
Local 1 v. Bricklayers, 143 L.R.R.M. 2107 (D. Minn. 1992) 21
Local 1052 Carpenters v. Los Angeles Carpenters, 944 F.2d 610 (9th Cir. 1991) 20
Local 2 Telephone Workers v. Telephone Workers, 261 F. Supp. 433 (D. Mass. 1966) 21
Local 20 v. Carpenters, 157 L.R.R.M. 2421 (SDNY, 1997) 21
Local 575 v. Plumbers, 995 F.Supp 1151 (D. Colo. 1998) 21
Local No. 82, Furniture and Piano Moving, Furniture Store Drivers v. Crowley, 467 U.S. 526 (1984), reh'g denied, 468 U.S. 1224 (1984) 13-18, 22
Mason Tenders Local 59 v. Laborers, 924 F. Supp. 528 (S.D.N.Y. 1996) 21
Miller v. Norfolk & W. Ry. Co., No. 89-4101, 1990 WL 163302, 917 F.2d 24 (6th Cir. 1990) .. 11
Millinery Workers Local 55/56 v. United Hatters, 495 F. Supp. 60 (E.D. Mo. 1980), aff'd, 657 F.2d 274 (table) (8th Cir. 1981) 21
Millwrights Local 1079 v. Carpenters, 878 F.2d 960 (6th Cir. 1989), cert denied 493 U.S. 965 (1989) 20

TABLE OF AUTHORITIES—Continued

Page

Morris v. Locomotive Engineers, 165 F. Supp.2d 662 (N.D. Ohio 2001) 21, 24
Navarro v. Gannon, 385 F2d 512 (2d Cir. 1967), cert. denied 390 U.S. 989 (1968) 21
Negrin v. Short, 152 L.R.R.M. 2535 (S.D.N.Y. 1996) 21
Pile Drivers Local 34 v. Carpenters, 992 F. Supp. 1138, 156 L.R.R.M. 2435 (N.D. Cal. 1997) 21
Plumbers and Pipefitters v. Plumbers and Pipefitters, Local 334, 452 U.S. 615 (1981) 13, 20
Plumbers Local 311 v. Plumbers, 130 L.R.R.M. 2063 (D. Conn. 1988) 21
Reed v. United Transp. Union, 488 U.S. 319 (1989) 22
Reich v. Local 843, 869 F.Supp. 1142 (D.N.J., 1994) 6
Ross v. International Brotherhood of Electrical Workers, 513 F.2d 840 (CA9 1975) 16, 18
Sheet Metal Workers' Intern. Ass'n v. Lynn, 488 U.S. 347 (1989) 22
Sheldon v. O'Callaghan, 497 F.2d 1276 (CA2, 1976) 24
Stage Employees Local 796 v. Powell, 124 L.R.R.M. 2053 (N.D. Cal. 1986) 21
Stelling v. IBEW Local 1547, 587 F.2d 1379 (9th Cir. 1978), cert denied, 442 U.S. 944 (1979) 21
Trbovich v. Mine Workers, 404 U.S. 528 (1972) ... 14, 15
UFCW Local 911 v. UFCW, 301 F.3d 468 (6th Cir. 2002) 20
United Auto Workers Local 594 v. United Automobile Workers, 956 F.2d 1330 (6th Cir. 1992) 16, 23

TABLE OF AUTHORITIES—Continued

Page

United Steelworkers of America v. Sadlowski, 457 U.S. 102 (1982), reh'g denied, 459 U.S. 899 (1982) 14, 22
Wirtz v. Local 153 Glass Bottle Blowers Ass'n, 389 U.S. 463 (1968) 14
Wooddell v. International Broth. of Elec. Workers, Local 71, 502 U.S. 93 (1991) 13, 20

STATUTES

28 U.S.C. § 1254(1) 2
28 U.S.C. § 1291 9
28 U.S.C. § 1337 5
L.M.R.A Section 1(b), 29 U.S.C. § 141(b) 12
L.M.R.A Section 301(A), 29 U.S.C. § 185(a) ..... *passim*
L.M.R.D.A. Section 101(a)(1), 29 U.S.C. § 411(a)(1) ..... *passim*
L.M.R.D.A. Section 101(a)(2), 29 U.S.C. § 411(a)(2) ..... *passim*
L.M.R.D.A. Section 401, U.S.C. § 481 ..... *passim*
L.M.R.D.A. Section 402, 29 U.S.C. § 482 ..... *passim*
L.M.R.D.A. Section 403, 29 U.S.C. § 483 ..... *passim*
L.M.R.D.A. Section 603, 29 U.S.C. § 523(a) 13
R.L.A., 45 U.S.C. §§ 151 et seq 11, 13

REGULATION

29 C.F.R. 452.14 6

OTHER AUTHORITIES

Construction Of Freedom Of Speech And Assembly Provisions Of § 101(A)(2) Of Labor-Management Reporting And Disclosure Act Of 1959 (29 U.S.C.A. § 411(A)(2)), Included In Bill Of Rights Of Member Of Labor Organizations, 143 A.L.R. Fed 1 ..... - 22

TABLE OF AUTHORITIES—Continued

Page

Klise, *Local 82, Furniture Moving Drivers v. Crowley: A Restatement of Institutional Powers Under Titles I and IV of LMRDA*, 34 Cath. U. L. Rev. 181 (1984) 16

IN THE

Supreme Court of the United States

No. 05-___

WARREN DAVIS, DENNIS LAPSO, ROBERT WICKLINE, AND GREGG SHOTWELL,

Petitioners,

v.

UNITED AUTOMOBILE WORKERS OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit, dated December 9, 2004, is reported at 390 F.3d 908 (6th Cir. 2004), and is reprinted as Appendix A, at App., *infra*, 1a to 7a.

The opinion and order of the United States District Court for the Eastern District of Michigan, Southern Division, dated August 1, 2003, is reported at 274 F.Supp.2d 922 (E.D. Mich. 2003), and is reprinted as Appendix B, at App., *infra*, 8a to 13a.

The District Court's denial of reconsideration, dated November 6, 2003, is reprinted as Appendix C, at App., *infra*, 14a.

Petitioners' proposed second amended complaint, docketed May 5, 2003, and referred to in the district court opnion, is reprinted as Appendix D, at App., *infra*, 15a to 26a.

The opinion of the Court of Appeals in the companion case from Ohio, *Davis v United Automobile Workers*, dated December 15, 2004, is reported at 392 F.3d 834 (6th Cir. 2004), and is reprinted as Appendix E, at App., *infra*, 27a to 36a.

The statutes and regulation involved are reprinted as Appendix F, at App., *infra*, 37a to 44a.

JURISDICTION

The court of appeals issued its opinion and judgment on December 9, 2004. The Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTES AND REGULATION INVOLVED

The relevant statutory provisions and regulation are reproduced at App. *infra*, 37a.

STATEMENT OF THE CASE

A. Statement of Facts

The facts are taken from petitioner union members' second amended complaint, and from supplemental facts noted by the court of appeals. Both are reproduced in the appendix, but without the four exhibits referred to by the pleading. App., *infra*, 1a, 15a.

The petitioners are members of respondent United Automobile Workers of America ("UAW" or "the union"), which is governed by a constitution. The union is divided into geographic regions nationally, each headed by an elected director, who with an assistant supervises contract negotiation and administration, organizing, and political action. One of the constitutional functions of the UAW's conventions every four years is to elect these directors.

Centered in Cleveland, Region 2 covered 47 locals in 36 counties in eastern Ohio, western Pennsylvania, and West Virginia, and represented 41,000 members.

Under the constitution in effect until 2002, except for amendments originating in the Constitution Committee, copies of all proposed constitutional amendments were to have been sent to the UAW at least three weeks before the convention. All timely amendments were printed in a booklet and distributed to delegates at the beginning of the convention. The amendment at issue here was not in the booklet.

Until the events of this case, the UAW had never combined regions except where there was a vacancy in the directorship of one or both of the regions. A combination of regions had never occurred without pre-convention discussion among the affected membership.

Going into the UAW convention in Las Vegas in 2002, one of the petitioners, Warren Davis, was the director of Region 2. He had initially decided to retire at the convention and pursue a run for Congress. But he changed his mind and decided to run again for director. His action violated no convention or union rule. In a meeting of delegates from Region 2, attended by Davis and petitioner Robert Wickline, the delegates elected him. No one appealed. The auditor certified the result on the same day, which was June 5, 2002.

The other regions held similar elections at the same time. No election at the convention was contested.

Later that day the senior leadership of the Administration Caucus met. With one exception every top UAW leader historically has been a member of this caucus. A proposal was drafted to amend the constitution to eliminate Region 2 and distribute its members among three contiguous regions.

The Caucus produced a leaflet saying Davis had violated a Caucus rule prohibiting Caucus members from running after

age 65, and had lied to UAW members about his intentions and denied them an honest election. It said the union's Constitution Committee was outraged and would report out an amendment to break up Region 2 and distribute it to other regions.

Petitioner UAW members did not learn of the plan until the next day, June 6. The convention was called to order, and the amendment proposed. During floor debate Davis stood by his seat on the podium with his hand up in sight of the chair. The chair refused to recognize him. After a few speakers the question was called. The amendment was overwhelmingly approved.

After the vote, petitioner Gregg Shotwell, a delegate, attempted to raise a point of order, saying the amendment was untimely. The convention laughed.

The convention adjourned. Meetings were held of the adjusted neighboring regions in which new nominations and elections of directors occurred.[1]

The convention re-convened on June 6 and certified all winning candidates.

Since the convention, the duties and functions of the former Region 2 director and assistant director have been transferred to personnel in other offices, resulting in disruption to operations and in performance of the functions they formerly handled.

In the District Court, the union conceded that "consolidation would not have occurred at the 2002 convention but for Davis's perceived manipulation of the election process." It added that "the court would have to consider the role that

---

[1] In the Court of Appeals petitioners noted that the same three individuals were elected in each of the three neighboring regions both before and after the amendment. Petitioners' opening brief to Court of Appeals, p. 18.

other considerations may have played in the delegates' decision to approve the amendment, such as administrative efficiencies . . . and . . . potential gains to be achieved by consolidating all UAW political activities in Ohio in a single region."[2]

B. Proceedings Below (In Michigan).

Four members, the petitioners, sued in the eastern district of Michigan in October 2002. The complaint alleged that the UAW amended its constitution at the 2002 convention in order to retaliate against Region 2 because it elected Davis. The suit claimed the retaliation consisted of dissolving the region and merging it into neighboring regions.

The suit claimed violations of Sections 101(a)(1) and (2) of Title I of the Labor-Management Reporting and Disclosure Act ("L.M.R.D.A."), 29 U.S.C. §§ 411(a)(1) and (2), and asked that the union's old structure be restored. Jurisdiction was alleged under 28 U.S.C. § 1337 and 29 U.S.C. § 401 et seq.

Without answering, the UAW moved to dismiss because (1) the complaint allegedly failed to state a claim, and (2) the Secretary of Labor (also referred to as the "Department of Labor" or "DOL") has exclusive jurisdiction of union election claims under Sections 401-03 of Title IV of L.M.R.D.A., 29 U.S.C. §§ 481-83.

Under the scheme of Title IV, after attempting to resolve an election complaint internally, a dissatisfied member may complain to the Secretary of Labor concerning violations of Section 401 and the Secretary's implementing regulations, 29 C.F.R. Part 452. After investigating, if the Secretary finds probable cause that a violation occurred that may have

---

[2] C.A. App. 77A-78A, R 6, UAW's brief in support of motion to dismiss complaint, 12/13/02, pp. 17-18, n. 12.

affected the result, he or she is to bring a civil action against the union under Section 402. Subsection (c) lists the types of relief the court can order, insofar as is relevant here:

> the court shall declare the election, if any, to be void and direct the conduct of a new election under supervision of the Secretary and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization. The Secretary shall promptly certify to the court the names of the persons elected, and the court shall thereupon enter a decree declaring such persons to be the officers of the labor organization.

The requirements of Title IV do not apply to the initial selection of officers of newly merged labor organizations.[3]

Several times before the district court the four members explained that they were not seeking an order installing Davis, and they were content that the electees in the new neighboring regions serve despite that they were elected unfairly. Pointing to the UAW's assertion in the motion that it intended to dispute the validity of Davis's election, the members said they would not resist the UAW on that point in the court. Instead, they said Davis would take his chances in the internal UAW appeal procedure.[4]

---

[3] 29 C.F.R. 452.14. App., *infra*, 44a. Compare *Reich v. Local 843*, 869 F.Supp. 1142, 1153 (D.N.J.,1994) (court rejects suggestion that repayment of improper campaign contribution would remedy an improper election, in part because reimbursement is not among the remedies for a violation set forth in § 402(c)).

[4] C.A. App. 68A, R 6, UAW's brief in support of motion to dismiss complaint, 12/13/02, p 8 n 6; C.A. App. 104A, R 7, plaintiffs' response to UAW's motion to dismiss, 1/6/03, p 16; C.A. App. 135A, 136A, 139A, R 15, plaintiffs' response to UAW's supplemental brief on motion to dismiss, 4/3/03, pp 2, 3, 6; C.A. App. 201A, R 20, plaintiffs' reply brief in support of motion to file supplemented and second amended complaint, 5/30/03, p 3.

The members repeated in the Court of Appeals they had no interest in an order validating Davis's election or invalidating the elections in the three neighboring regions.[5]

By stipulation the members amended the complaint to add a meaningful-and-informed-vote count under Section 101(a)(1). The "vote" referred to in this count was the vote to amend the constitution, not the votes to elect candidates.

Finally, the four members moved to amend the complaint a second time, to add a claim under Section 301(a) and the UAW constitution, alleging that the amendment violated the constitution's three-week notice rule, as well as historic union restructuring practices. This complaint said the union had eliminated regions in the past, but only after pre-convention discussion among the affected membership, and only when there was a vacancy in the directorship of at least one of the affected regions. The union opposed the motion only on the ground that the DOL had exclusive jurisdiction.

While the motion was pending Petitioner Davis filed a complaint with the DOL. As in the court, he asked the DOL to take action to rescind the union's constitutional amendment. He did not ask that he be installed as the regional director. In the same complaint he noted that—consistent with what he was saying to the court—he thought the DOL had no jurisdiction to order the restructuring relief he was requesting, and that the DOL had never ordered such relief. He explained he was filing the complaint anyway in the event he was mistaken about DOL jurisdiction.[6]

---

[5] Petitioners' opening brief to Court of Appeals, pp 6-7, 18-20; reply brief, pp 7, 8.

[6] C.A. App. 207A-08A, R 20, plaintiffs' reply brief in support of motion to file supplemented and second amended complaint, attachment 2, letter, Davis to Gearhart, 5/15/03.

While these were pending, in August 2003 the district court dismissed, citing the DOL's exclusive jurisdiction.

The District Court reasoned:

> In essence, the complaint challenges the propriety of a vote to amend the UAW constitution. The vote was taken as part of an election process and resulted in a re-run election. Despite plaintiff's characterization of the relief sought, reinstatement of Region 2 would essentially validate the results of an election already conducted in which Davis was elected director. At the same time, this court would have to invalidate the post-amendment elections of successful candidates in the redrawn Regions 2B, 8, and 9. Such post-election relief must be sought exclusively with the Secretary of Labor in accordance with 29 U.S.C. § 483. The contemplated relief challenges an election already conducted, and thus, the court lacks subject matter jurisdiction pursuant to the limitations of Title IV of LMRDA.[7]

The court rejected the second amended complaint for the same reason, and did not reach the union's alternative defense that the first two counts failed to state claims.[8]

Three months later the DOL dismissed Davis's complaint on the merits. First, it noted and bypassed the threshhold question on which petitioners seek certiorari:

> Your complaint stated that you had grave doubts as to whether the Department of Labor has jurisdiction of this matter under Title IV of the LMRDA. Whether or not there is jurisdiction of this matter under the LMRDA, the Department concludes after careful investigation and review that the LMRDA was not violated in this instance.[9]

---

[7] App., *infra*, 11a-12a.

[8] App., *infra*, 12a.

[9] C.A. App. 223A-24A, R 27, letter, Heaney to Davis, 11/5/03.

The following day the district court denied reconsideration without opinion. App., *infra*, 14a.

On *de novo* review under 28 U.S.C. § 1291, the Sixth Circuit affirmed, citing both the UAW's grounds. It held:

> Although Davis purports to rely solely on Title I, the relief he seeks is available only under Title IV of the LMRDA because rescission of the challenged amendment would reinstate Region 2, with Davis as its director, and invalidate the three subsequent elections for director in the new regions.
>
> Because "the substance of the claim is controlling," we must treat Davis's complaint as arising under Title IV of the LMRDA.[10]

Previously, the Court of Appeals said the members had no claim anyway:

> As evidence that the UAW violated his rights under Title I, Davis points to the fact that the convention delegates acted in contravention of the UAW Constitution by failing to introduce the amendment to dissolve Region 2 at least three weeks in advance of the convention vote. He also complains that potential candidates from Region 2 were given inadequate time to challenge incumbent directors in the three reconstituted regions because elections for these positions were held on the very same day that Region 2 was dissolved and its membership redistributed. Disregarding the fact that these arguments are equally applicable to the claim that Davis's secret candidacy for director of Region 2 also violated the UAW Constitution and Title I of the LMRDA, the allegations made by Davis do not establish that members of Region 2 were denied election-related privileges enjoyed by UAW members in other regions. Absent discrimination of this kind, Davis may not maintain an action under Title I.

---

[10] App., *infra*, 6a.

The Court did not examine whether the members had stated a claim under Section 301(a).[11]

Judgment was entered the same day, on December 9, 2004.

C. Ohio Proceedings.

Petitioner Davis individually began separate litigation arising out of the same UAW convention in an Ohio state court. He sued the union and two of its officers, advancing state-law claims of age discrimination, conspiracy to discriminate on the basis of age, wrongful discharge, retaliation, libel, and slander. The claims were premised on the assertion that he was successfully elected as the Region 2 director. Unlike in the Michigan case, the Ohio complaint alleged in terms that the regional reorganization improperly deprived him of his rightful office. It requested reinstatement, backpay, and damages.

The union removed the case to the district court, contending among other things, as here, that the adjudication of the claims would necessarily require a determination regarding the validity of the UAW election.

The Ohio district court remanded the action to the state court after concluding that it lacked subject matter jurisdiction. The UAW appealed.

A few days after the Court of Appeals decision in the present Michigan case, the same panel reversed with instructions to dismiss the Ohio case, relying in part on its decision in the Michigan case.

> We agree with the district court's conclusion that the preemptive scope of the LMRDA is narrow, but disagree that Davis's claims are not within that narrow scope.
>
> . . .
>
> Davis's state-law claims in question, including his requested remedy of back pay, logically hinge on his

---

[11] App., *infra*, 5a-6a.

assertion that he was lawfully elected. As the district court in Michigan correctly concluded, claims for postelection relief are relegated to the exclusive jurisdiction of the Secretary of Labor by the LMRDA. *Davis v. UAW*, 2004 WL 2812623 (6th Cir. Dec. 9, 2004). [App. *infra*, p. 1a] Davis's claims for age discrimination, conspiracy, wrongful termination, and retaliation should therefore be dismissed by the district court for lack of subject matter jurisdiction.

. . .

In order for Davis to establish a prima facie case for libel or slander, he must show that the delegates' statements regarding the impropriety of his actions in the election were false. . . . [citing an Ohio state case] To determine whether the statements are false, however, the validity of the election and Davis's tactics therein must be examined.

But this inquiry has already been conducted by the Secretary of Labor in responding to Davis's Title IV complaint. After acknowledging that some delegates had "privately published and distributed a pamphlet condemning [Davis's] stratagem and purposes," the Secretary nevertheless found that the delegates' actions at the Convention had not violated Davis's election-related rights. Because Davis's claims for libel and slander would necessarily require a court to revisit this finding, these claims are also preempted by Title IV of the LMRDA. *Cf. Henegar v. Banta*, 27 F.3d 223, 226-27 (6th Cir. 1994) (holding that the Railway Labor Act "preempts state law claims based on libel and slander" because the "court would inevitably have to interpret the terms of the collective bargaining agreement," a task within the exclusive jurisdiction of the National Railroad Adjustment Board); *Miller v. Norfolk & W. Ry. Co.*, No. 89-4101, 1990 WL 163302, at *5 (6th Cir. Oct. 25, 1990) (unpublished) (finding libel and slander claims preempted by the Railway Labor Act where, "[a]lthough defamation was not an issue before the [administrative]

board," the defamation claim was "based upon a matrix of facts that [wa]s inextricably intertwined with the collective bargaining agreement").[12]

Davis sought reconsideration en banc, which the Court of Appeals denied without opinion nine days ago on February 28, 2005.

REASONS FOR GRANTING THE WRIT

I. CERTIORARI SHOULD BE GRANTED TO EXAMINE THE RELATION OF TWO PRE-EMPTING FEDERAL LABOR STATUTES, AND A CONFLICT WITH THE NINTH CIRCUIT AND THIS COURT.

Considered together, the Michigan and Ohio opinions hold that Section 403 preempts state laws and federal laws, both.

One of the federal laws it preempts, Section 301(a), was enacted to avoid or minimize "industrial strife."[13] Under the doctrine of complete preemption it is itself a statute of such "extraordinary" force, and "so powerful," as to displace entirely any state claim which is "substantially dependent on analysis of a collective bargaining agreement."[14]

The "contracts" referred to in the cited cases were collective bargaining agreements between employers and labor organizations. But Section 301(a) also preempts claims for violation of "contracts" between labor organizations, that is,

---

[12] *Davis v United Automobile Workers*, 392 F.3d 834, 839-40 (6th Cir. 2004), App., *infra*, at 34a-36a.

[13] L.M.R.A Section ~~1(b), 2~~9 U.S.C. § 141(b).

[14] *Caterpillar Inc v Williams*, 482 U.S. 386, 393-94 (1987); *Franchise Tax Board of the State of California v Construction Laborers Vacation Trust for Southern California*, 463 U.S. 1, 23-24 (1983); *see also Electrical Workers v Hechler*, 481 U.S. 851, 859, n. 3 (1987); *Allis-Chalmers v. Lueck*, 471 U.S. 202, 220 (1985); *Lingle v. Norge Division of Magic Chef Inc*, 486 U.S. 399 (1988).

union constitutions like the one here which allocates power among international, regional, and local labor organizations.[15]

In holding that Section 403 preempts the Ohio state claims, the Court of Appeals in the Ohio opinion analogized it to cases under the Railway Labor Act, one of which noted that "preemption under the RLA is even more pervasive [than preemption under the Section 301(a)]."[16]

So based on the Michigan decision, the Ohio decision held that despite its "narrow scope"[17] Section 403 is an unusual federal statute with power of formidably complete preemption.[18]

It may be that despite all its power Section 301(a) will be held subordinate to Section 403. Section 401(e) does say "The election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this subchapter."

But despite a suggestion to that effect at one point, the Supreme Court has never held that Section 403 preempts Section 301(a), much less that it displaces Section 301(a) and preempts it "completely."

The Court has outlined the relation of Titles I and IV on four occasions. In doing so, it has "cautioned against a literal reading" of the "complex statutory scheme created by Congress" in the LMRDA, and particularly in the interaction between the two titles.[19]

---

[15] *Plumbers and Pipefitters v. Plumbers and Pipefitters, Local 334*, 452 U.S. 615 (1981); *Wooddell v. International Broth. of Elec. Workers, Local 71*. 502 U.S. 93 (1991).

[16] *Henegar v Banta*, 27 F.3d 223, 226 (6th Cir. 1994); 45 U.S.C. §§ 151 et seq.

[17] See L.M.R.D.A. Section 603, 29 U.S.C. 523(a).

[18] App. *infra*, 35a.

[19] *Local No. 82, Furniture and Piano Moving, Furniture Store Drivers v. Crowley*, 467 U.S. 526, 529, 541 (1984), reh'g denied, 468 U.S. 1224

In *Calhoon v. Harvey*, 379 U.S. 134 (1964), the Court faced a pre-election challenge under Section 101(a)(1) to several union rules related to eligibility and nomination. The union members asked to enjoin the union from conducting the election until the rules were revised. Finding that Section 101(a)(1) prohibits only discriminatory application of rules and not their reasonableness, the Court said the allegations in substance claimed only under Title IV. Therefore only the Secretary of Labor could make them.

In *Trbovich v. Mine Workers*, 404 U.S. 528 (1972), a union member sought to intervene in an election suit brought by the Secretary. The Court allowed it, but only to support theories advanced by the Secretary, not to advance new ones. In a footnote the Court added that at the remedy stage a court would not be limited to consideration of remedies proposed by the Secretary, and there was no reason to prevent the intervenors from assisting the court in fashioning a suitable remedial order. 404 U.S. at 636, n. 8.

In *Dunlop v. Bachowski*, 421 U.S. 560 (1975), the Court held a decision by the Secretary not to pursue court action under Title IV was subject to limited review in the district court under an arbitrary-and-capricious standard.

Finally, in *Local No. 82, Furniture and Piano Moving, Furniture Store Drivers v. Crowley*, 467 U.S. 526 (1984), reh'g denied, 468 U.S. 1224 (1984), the Court held an order invalidating a union election and providing court supervi-

---

(1984) ("Like much federal legislation the statute was 'the product of conflict and compromise between strongly held and opposed views, and its proper construction frequently requires consideration of its wording against the background of its legislative history and in the light of the general objective Congress sought to achieve.'") See also *Wirtz v. Local 153 Glass Bottle Blowers Ass'n*, 389 U.S. 463, 468 (1968); *United Steelworkers of America v. Sadlowski*, 457 U.S. 102, 111 (1982), reh'g denied, 459 U.S. 899 (1982).

sion of a new election was not an appropriate remedy for a Title I violation:

> In sum, whether suits alleging violations of Title I of the LMRDA may properly be maintained during the course of a union election depends upon the appropriateness of the remedy required to eliminate the claimed statutory violation. If the remedy sought is invalidation of the election already being conducted with court supervision of a new election, then union members must utilize the remedies provided by Title IV. For less intrusive remedies sought during an election, however, a district court retains authority to order appropriate relief under Title I.[20]

In so ruling, the Court retreated from one aspect of *Trobovich* which has particular relevance to the members' claim under Section 301(a) in this Michigan case:

> *Trbovich* cited *Calhoon* . . . for the proposition that "§ 403 prohibits union members from initiating a private suit to set aside an election." 404 U.S., at 531 . . . Although *this somewhat overstated our holding in Calhoon*, which was limited to the exclusivity of post-election suits by the Secretary for violations of Title IV, we believe that the policies supporting Congress' decision to consolidate Title IV suits with the Secretary are equally applicable to Title I suits that seek to "set aside an election."[21]

---

[20] 467 U.S. at 550.

[21] 467 U.S at 549-50 [emphasis added, footnote omitted]. *Crowley* also retreated from one aspect of *Bachowski*, which had held "*Provisions concerning the conduct of the election itself, however, may be enforced only according to the post-election procedures specified in 29 U.S.C. § 482.* Section 483 is thus not a prohibition against judicial review but simply underscores the exclusivity of the § 482 procedures in post-election cases." 421 U.S. at 566-56 (emphasis added). *Crowley* said "To the extent that our decision today holds that district courts may award certain Title I relief during the course of a union election, that holding

In a footnote the Court also excepted from the holding actions that "do not directly challenge the validity of an election already conducted."[22]

Mindful of *Crowley*'s admonition that "less intrusive" remedies remain viable in suits which do not "directly" challenge an election, the second amended complaint disclaims any interest in Davis's personal fate, or in the election results or leadership of the three reconstituted Regions 2B, 8, or 9.[23]

But the Court of Appeals foreclosed the disclaimer, saying that regardless of these concessions Davis would be reinstated in a restored Region 2 anyway, apparently because his election was not appealed and was certified.

The petitioner-members accept this, though noting his reinstatement would be only one among several other results (effect on contract administration, organizing, and political action) which concern the suit explicitly.

---

prevails over any inconsistency with the italicized sentence." 467 U.S. at 550, n. 22.

[22] 467 U.S. at 541, n. 16, citing *Ross v. International Brotherhood of Electrical Workers*, 513 F.2d 840 (CA9 1975) (common-law tort claim against individual union officer); *Amalgamated Clothing Workers Rank and File Committee v. Amalgamated Clothing Workers of America*, Philadelphia, Joint Board, 473 F.2d 1303 (CA3 1973) (preelection suit in which appellants asked to enjoin a nominating meeting and declare certain election bylaws violative of Title I, and did not seek judicial relief relative to the election, which was later completed); see also *United Auto Workers Local 594 v. United Automobile Workers*, 956 F.2d 1330, 1337, n. 2 (6th Cir. 1992) (under *Crowley*, § 483 does not necessarily bar relief when the validity of the election is not challenged "directly.") See generally Klise, *Local 82, Furniture Moving Drivers v. Crowley: A Restatement of Institutional Powers Under Titles I and IV of LMRDA*, 34 Cath. U. L. Rev. 181 (1984).

[23] *Supra*, n. 4, and accompanying text. The three new elections in these regions were not subject to Title IV. App., *infra*, 44a.

But that simply highlights the question whether election matters should trump non-election matters, that is, whether Section 403 preempts constitutional and Title I claims completely.

Title IV never has and indeed cannot remedy an improper union restructuring. For it is a given that the Secretary lacks power to force the UAW to restructure itself back to the *status quo*. Without contradiction from respondent, the courts below, or the Department of Labor, petitioners have so asserted throughout the litigation. Searching the reported cases under the enforcement provision of Title IV, Section 402, there is none in which the Secretary sought, or the court granted, adjustment of the boundaries, or the constituencies, in a union election. There is no power particularly in this case because, as the UAW contends, see *supra* at n.2 and accompanying text, the Secretary would have had to weigh institutional non-election-related considerations, such as political action activities in Ohio. Further, as the four members contend, she would have had to weigh disruptive non-election-related results in the areas of organizing, contract administration, and political action. These are areas in which she has no special competence beyond the Court's.

So even had the Secretary been convinced on the merits—for instance that the amendment violated the three-week requirement and past UAW practices—litigation would have been futile. DOL proceedings would have ended on that basis.

To be sure, in light of Section 402(c) (which allows the Secretary to take action only if a violation "affected the outcome of an election"), Congress did intend that some Title IV violations go unremedied. But unlike the District Court, App., *infra*, 11a, the Court of Appeals did not view the dissolution of Region 2 "as part of an election process."

One of the non-preempted cases which survived *Crowley* was *Ross v. International Brotherhood of Electrical Workers*, 513 F.2d 840 (CA9 1975). *Ross*, like Davis's defamation claims in the Ohio case, involved common law torts alleged by a candidate against an individual union officer. According to the plaintiff the acts interfered with advantageous financial relations he had with the union. Noting that the Secretary could not compensate the plaintiff for the torts and that the complaint did not seek relief which would interfere with the union pursuant to the election, the suit was allowed to proceed.

As in the present case, in *Ross* the claims "involve[d] different considerations, different harms and different remedies." 513 F.2d at 842. *Ross* is in direct conflict with the Ohio decision, which itself flowed from the holding in the Michigan decision.

Crowley said the district courts may order less intrusive remedies sought during an election. Holding that a union action touching on many subjects, only one of which was an election, is a serious expansion of Section 403. A holding that it displaces another federal statute enacted to avoid or substantially minimize industrial strife, where an election was only one of several concerns of the constitutional amendment, where Title IV itself can afford no relief at all in the situation, and where the suit plaintiffs are indifferent to election relief, is on a collision course with *Crowley* and *Ross*.

Substantial questions of subject-matter jurisdiction need clarification. This case is an appropriate vehicle with a simple record. The Court should grant review.

II. PETITIONERS' CLAIMS ARE INDEPENDENTLY COGNIZABLE SECTIONS 301(A) AND 101(a)(1) and (2).

Fairly included in the certiorari question are questions whether the second amended complaint stated cognizable

claims. The Court of Appeals said it did not state a claim under Title I, and did not address itself to Section 301(a). App., *infra*, at 6a. In this part of the Reasons, petitioners briefly show that the law on four of their claims is conflicted.

The four petitioner-members are an aggregate of active and retired members, both in an out of the old Region 2. No challenge to their standing has been made. More broadly, if successful the suit will benefit the 41,000 members in the 47 locals affected. Their interests are substantial. Due to the ensuing geographic change critical union functions of contract negotiation and administration, organizing, and political action have been disrupted.[24]

Whether the claims are factually supported is not addressed. For that the Court and parties must await the union's answer.

A. Section 301(a) allows suits on union constitutions without requiring proof of discrimination.

The second amended complaint[25] alleged under Section 301(a) that the amendment dissolving Region 2 was undertaken in violation of respondent's existing rules, practices, and constitutional provisions governing the amendment process.

According to the pleading, no regional dissolution had ever occurred in this union except when one of the affected directors was vacating the office, and then only after pre-convention discussion among the affected membership. The amendment violated this practice, as well as convention rules of order, and a constitutional requirement that it be submitted three weeks in advance for review by the Constitution Committee, the pleading says.

---

[24] Second amended complaint, ¶¶ 5, 7, 8, 49, App., *infra*, 18a, 24a.

[25] App., *infra*, 15a.

In addition to the facts in the pleading, in the Court of Appeals the members offered to prove that prior to the convention the UAW distributed documents to members and officers describing the three-week rule as a "deadline" and a "cutoff date," which was "necessary" not merely convenient for the union; and though the UAW constitution exempts amendments originating in the convention Constitution Committee from the three-week rule, the challenged amendment here originated outside that committee.[26]

Section 301(a) allows union members to sue directly on the constitution, regarded as a contract.[27]

In numerous cases the various lower courts have entertained suits which, like this one, sought to enjoin a union restructuring under Section 301(a). Though some have required a showing of discriminatory conduct as a prerequisite to relief, that was only in regard to accompanying claims under L.M.R.D.A. Section 101(a)(1). None has required this showing under Section 301(a).

The Court of Appeals' decision below said "[a]bsent discrimination of this kind, Davis may not maintain an action under Title I." App., *infra*, 6a. It overlooked that there was a claim under Section 301(a). To the extent it may have intended to require an allegation of discrimination as part of any constitutional claim under Section 301(a), it would be in conflict with many other courts.[28]

---

[26] Petitioners' opening brief to Court of Appeals, pp. 15-16.

[27] *Plumbers and Pipefitters v. Plumbers and Pipefitters, Local 334*, 452 U.S. 615 (1981); *Wooddell v. International Broth. of Elec. Workers, Local 71*, 502 U.S. 93 (1991).

[28] *UFCW Local 911 v. UFCW*, 301 F.3d 468 (6th Cir. 2002); *Harvey v. Hollenback*, 113 F.3d 639 (6th Cir. 1997); *Local 1052 Carpenters v. Los Angeles Carpenters*, 944 F.2d 610 (9th Cir. 1991); *Carpenters Local 48 v. Carpenters*, 920 F.2d 1047 (1st Cir. 1990); *Millwrights Local 1079 v. Carpenters*, 878 F.2d 960 (6th Cir. 1989), cert denied 493 U.S. 965

B. In requiring that discriminatory treatment be shown in a claim under Section 101(a)(2), the free-expression-of-views statute, the decision below conflicts with the statute's literal wording and the holdings of other circuits.

Unlike Section 101(a)(1), Section 101(a)(2) is a guarantee of free speech and expression of views. It requires no showing that members of Region 2 were discriminated against in the sense that they were denied election-related privileges enjoyed by UAW members in othe regions. No court has ever required a showing of discrimination in a case under Section 101(a)(2). Compare *Navarro v. Gannon*, 385 F2d 512, 520 (2d Cir. 1967), cert. denied 390 U.S. 989 (1968) (Section 101(a)(2)) and *Calhoon v. Harvey*, 379 U.S. 134, 138-39 (1964) (Section 101(a)(1)).[29]

(1989); *Stelling v. IBEW Local 1547*, 587 F.2d 1379 (9th Cir. 1978), cert denied, 442 U.S. 944 (1979); *Morris v. Locomotive Engineers*, 165 F. Supp.2d 662 (N.D. Ohio 2001); *Local 575 v. Plumbers*, 995 F.Supp 1151 (D. Colo. 1998); *Local 20 v. Carpenters*, 157 L.R.R.M. 2421 (SDNY, 1997); *Pile Drivers Local 34 v. Carpenters*, 992 F. Supp. 1138, 156 L.R.R.M. 2435 (N.D. Cal. 1997); *Negrin v. Short*, 152 L.R.R.M. 2535 (S.D.N.Y. 1996); *Mason Tenders Local 59 v. Laborers*, 924 F. Supp. 528 (S.D.N.Y. 1996); *Carpenters v. Raymond*, 145 L.R.R.M. 2331 (D. Conn. 1993); *Local 1 v. Bricklayers*, 143 L.R.R.M. 2107 (D. Minn. 1992); *Plumbers Local 311 v. Plumbers*, 130 L.R.R.M. 2063 (D. Conn. 1988); *Stage Employees Local 796 v. Powell*, 124 L.R.R.M. 2053 (N.D. Cal. 1986); *Dornan v. Sheet Metal Workers*, 640 F. Supp. 418 (E.D. Mich. 1986); *Millinery Workers Local 55/56 v. United Hatters*, 495 F. Supp. 60 (E.D. Mo. 1980), aff'd, 657 F.2d 274 (table) (8th Cir. 1981), *Kahn v. Hotel Restaurant Employees*, 469 F. Supp. 14 (N.D. Cal. 1977), aff'd 597 F.2d 1317 (9th Cir. 1979); *Local 1 (ACA) Broadcast Employees v. Teamsters*, 419 F. Supp. 263 (E.D. Pa. 1976), later decision 461 F. Supp. 961 (E.D. Pa. 1978), on appeal, 614 F.2d 846 (3rd Cir. 1980); *Local 2 Telephone Workers v. Telephone Workers*, 261 F. Supp. 433 (D. Mass. 1966).

[29] Other treatments of Section 101(a)(2) in this Court are: *Hall v. Cole*, 412 U.S. 1 (1973) (vindication of free speech rights rendered substantial service to union); *Finnegan v. Leu*, 456 U.S. 431 (1982) (Title I does not

The Region 2 delegates' vote for Davis was in the most literal sense an "expression at [a] meeting[] . . . [o]f views upon candidates in an election," for which the region's 47 locals and 41,000 members suffered the retaliation that this suit seeks to remedy. Accordingly a claim was stated, and the Court of Appeals was in conflict with the noted courts on this point.

C. Penalizing all the members of Region 2 by dissolving their region because their delegates voted for a certain candidate violated the protection of equal election voting rights under Section 101(a)(1).

Penalizing union members because their delegates voted for a certain candidate violates rights implicit in Section 101(a)(1). Citing *Calhoon*, the Sixth Circuit explained in 1992:

> The fact that it is reasonable for the convention to have the final say within the union does not mean that the

---

restrict freedom of elected leader to choose staff whose views are compatible); *United Steelworkers of America v. Sadlowski*, 457 U.S. 102 (1982), reh'g denied, 459 U.S. 899 (1982) (union may adopt rule barring candidates from accepting campaign contributions from non-members); *Local No. 82, Furniture and Piano Moving, Furniture Store Drivers v. Crowley*, 467 U.S. 526 (1984), reh'g denied, 468 U.S. 1224 (1984) (order invalidating a union election and providing court supervision of a new election is not an appropriate remedy for a Title I violation); *Reed v. United Transp. Union*, 488 U.S. 319 (1989) (being patterned after the First Amendment, statute's most analogous limitation period is that for state personal injury actions); *Sheet Metal Workers' Intern. Ass'n v. Lynn*, 488 U.S. 347 (1989) (removal of elected business agent in retaliation for statements at a meeting violated statute). See generally *Construction Of Freedom Of Speech And Assembly Provisions Of § 101(A)(2) Of Labor-Management Reporting And Disclosure Act Of 1959 (29 U.S.C.A. § 411(A)(2)), Included In Bill Of Rights Of Member Of Labor Organizations*, 143 A.L.R. Fed 1.

> convention, when it speaks for the union, can countermand the directives of Congress. . . .
>
> Among the rights which Congress has secured to every member of the UAW are "equal" voting rights. 29 U.S.C. § 411(a)(1). Implicit in the concept of equal voting rights, we believe, is the notion that no union member can be penalized or subjected to reprisal, directly or indirectly, because he or she voted for dissident candidates. *Calhoon v. Harvey*, 379 U.S. 134, 139, 85 S.Ct. 292, 295, 13 L.Ed.2d 190 (1964) (stating that § 411(a)(1) is "a command that member and classes of members shall not be discriminated against in their right to nominate and vote.") It would hardly be treating voters equally for an international union to say that the members of locals that elected dissident candidates can expect to see their locals saddled with election costs not imposed on locals that elect majority candidates.[30]

The reprisal in *Local 594* was a requirement that a local rerun an expensive delegate election. The reprisal in the present case was that a region of 41,000 members was dissolved. There is no significant difference between the two.[31]

According to the pleading, Section 101(a)(1) was therefore violated in relation to the vote for Region 2 director, and the Court of Appeals was in conflict with its own previous decision.

---

[30] *United Auto Workers Local 594 v. United Automobile Workers*, 956 F.2d 1330, 1337 (6th Cir. 1992).

[31] See also *Christopher v. Safeway Stores*, 644 F.2d 467, 470 (5th Cir.1981) (because the union constitution creates a right to vote on a contract, Section 101(a)(1) prohibits the denial to all members of the right to vote on the contract.

D. Misleading the delegates about the procedural irregularities leading up to introduction of the amendment on the convention floor deprived them of the right to vote in a meaningful and informed way, in violation of Section 101(a)(1).

The proposed second amended complaint[32] alleged the convention's vote was not meaningful and informed because delegates were not told of an irregularity—non-consideration by the Constitution Committee—by which the amendment came to the floor. Just the opposite was suggested to them, when a member of that committee moved the amendment onto the floor "on behalf" of that committee, the pleading says.

The equal-voting-rights law is construed to protect the right of all to vote in a meaningful and informed way, without a showing of discrimination among members or classes of members.[33]

Whether failure to inform the delegates of the procedural irregularity rises to the level of a denial of an informed and meaningful vote is a factual issue to be tested after the UAW answers. For now it is sufficient to say the decision below is in conflict with the noted courts in regard to the vote on the amendment.

---

[32] App., *infra*, 15a.

[33] See e.g. *Blanchard v. Johnson*, 388 F Supp 208, 213-16 (ND Ohio, 1974), aff'd in relevant part 532 F2d 1074, 1078-79 (CA6, 1970); *Bauman v. Presser*, 117 LRRM 2393 (CADC, 1984), appeal dismissed as moot, 119 LRRM 2247 (CADC, 1985); *Morris v. Locomotive Engineers*, 165 FSupp2d 662, 666-69 (ND Ohio, 2001); *Sheldon v. O'Callaghan*, 497 F2d 1276, 1281-83 (CA2, 1976).

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorary should be granted and the decision of the court below reversed.

Respectfully submitted,

RONALD J. REOSTI
REOSTI, JAMES & SIRLIN, PC
925 Ford Building
615 Griswold Street
Detroit, MI 48226-3988
(313) 962-2770

ELLIS BOAL
Counsel of Record
9330 Boyne City Road
Charlevoix, MI 49720
(231) 547-2626

Attorneys for Petitioners

APPENDICES

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 03-2580

WARREN DAVIS, DENNIS LAPSO, ROBERT WICKLINE, AND GREGG SHOTWELL,
Plaintiffs Appellants,

v.

UNITED AUTOMOBILE WORKERS OF AMERICA,
Defendant Appellee.

Appeal from the United States District Court
for the Eastern District of Michigan at Detroit.
No. 02-74211—John Feikens, District Judge

Argued: September 22, 2004
Decided and Filed: December 9, 2004

Before: KEITH, MOORE, and GILMAN, *Circuit Judges*.

OPINION

RONALD LEE GILMAN, *Circuit Judge*. Warren Davis and three other members of the United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) appeal the dismissal of their lawsuit challenging an amendment made to the UAW Constitution at its June 2002 Constitutional Convention. The amendment had the effect of setting aside Davis's reelection as a regional director by dissolving his region and redistributing its members among three contiguous regions. After concluding that the plaintiffs' request for rescission of the allegedly retaliatory amendment

was a claim for postelection relief, the district court held that the action was barred by Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. §§ 481-83 (2004). For the reasons set forth below, we AFFIRM the judgment of the district court.

I. BACKGROUND

A. Factual background

The UAW is divided nationally into geographic regions, with each region headed by an elected director who holds a seat on the UAW's governing board. Davis served for 19 years as the director of Region 2, representing the interests of approximately 41,000 UAW members in parts of Ohio, Pennsylvania, and West Virginia. His tenure on the UAW's governing board ended, however, when Region 2 was dissolved at the UAW's June 2002 Constitutional Convention.

The present litigation arises from actions taken at the UAW convention following Davis's controversial election to another term as director of Region 2. Immediately following the election, convention delegates complained that Davis had improperly concealed his candidacy for the office in order to prevent the development of any effective opposition. These allegations arose because Davis had announced prior to the convention that he intended to vacate his director's position in order to run for Congress in 2002. He then endorsed his assistant director, who remained the sole candidate for his soon-to-be-vacant position. Just before the vote at the convention, however, Davis apparently had a change of heart and arranged for his assistant to nominate him and then withdraw from the race. This surprise move allowed Davis to win the election unopposed.

Had Davis made public his bid for director, he would have faced strong opposition from an unofficial group of UAW delegates calling themselves the Administrative Caucus. Long a member of this politically powerful group, Davis had

pledged to abide by its informal rule that members would not seek elective office in the UAW after reaching 65 years of age, thus making room for new leaders. In direct contravention to this policy, however, Davis accepted another term as director at age 67. Members of the Administrative Caucus reacted the following morning by issuing a press release that called upon the UAW convention delegates to approve an amendment to dissolve Region 2, redistribute its members among three neighboring regions, and convene new elections for director in each region. That afternoon the proffered amendment was overwhelmingly approved by the convention delegates. The UAW successfully defended its tactics and the validity of the new elections in proceedings before the UAW's internal review board and before the United States Secretary of Labor.

B. Procedural background

Davis commenced the present litigation in the United States District Court for the Eastern District of Michigan, seeking rescission of the constitutional amendment and the reinstatement of Region 2. He alleges that the UAW eliminated Region 2 in order to punish its delegates for having elected him, and that such retaliation violates Title I of the LMRDA, 29 U.S.C. §§ 411-415. Although the UAW does not dispute that the convention delegates who voted to eliminate Region 2 were likely "angered by what they perceived as Davis'[s] manipulation of the electoral process," it insists that their actions did not violate the LMRDA.

Regardless of the merits of Davis's claims, however, the UAW contends that his suit must be dismissed because the remedy sought by Davis—rescission of the allegedly retaliatory amendment constitutes postelection relief that is relegated to the exclusive jurisdiction of the Secretary of Labor by Title IV of the LMRDA, 29 U.S.C. §§ 481-83. The district court agreed. It therefore dismissed the case after finding a lack of subject matter jurisdiction over Davis's

claims because the Secretary of Labor was not a party to the action as required by 29 U.S.C. § 482(b). This timely appeal followed.

II. ANALYSIS

A district court's application of the LMRDA is reviewed de novo. *Argentine v. United Steelworkers of Am.*, 287 F.3d 476, 482 (6th Cir. 2002). In enacting the LMRDA, Congress sought to provide "a comprehensive scheme for the regulation of union elections." *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 531-32 (1972) (finding that the LMRDA is Congress's "exclusive post-election remedy" for labor union election disputes). Where a union election has already been conducted, Title IV of the LMRDA mandates that post-election challenges may be brought only by the Secretary of Labor. 29 U.S.C. § 483 ("The remedy provided by this subchapter for challenging an election already conducted shall be exclusive."); *see also Trbovich*, 404 U.S. at 531, 536 (stating that the LMRDA "prohibits union members from initiating a private suit to set aside an election" because "Congress intended to prevent members from pressing claims not thought meritorious by the Secretary").

A union member who wishes to challenge the results of an election under the LMRDA must therefore file a complaint with the Secretary of Labor. 29 U.S.C. § 482(a). If the Secretary finds probable cause to believe that a violation of the LMRDA has occurred, the Secretary may file suit in federal district court. 29 U.S.C. § 482(b); *see Calhoon v. Harvey* 379 U.S. 134, 140 (1964). Although a disgruntled union member may intervene in a suit for postelection relief, the district court does not have jurisdiction to adjudicate the claims of the private parties unless the Secretary of Labor has instigated the action. 29 U.S.C. § 483; see Trbovich, 404 U.S. at 536-37.

Davis filed a complaint with the Secretary of Labor, whose office investigated the events surrounding the UAW convention and subsequently issued a report stating that there had been "no violation of the LMRDA." Because there was no probable cause finding by the Secretary, the district court correctly determined that Davis's suit could not proceed under Title IV of the LMRDA. Davis acknowledges this reality, but insists that it is immaterial for the purposes of this litigation because he seeks relief pursuant to Title I of the LMRDA, rather than under Title IV. He argues that a rescission of the amendment dissolving Region 2 would not invalidate the elections for director in the three reformed regions, a result which may be accomplished only by recourse to Title IV, but would simply invalidate a "union restructuring" violative of Title I.

Title I of the LMRDA proclaims a "Bill of Rights" for union members that guarantees them "equal rights and privileges" to nominate and vote for candidates, as well as protection from improper retaliation resulting from the exercise of these democratic rights. 29 U.S.C. § 411. In contrast to claims for postelection relief under Title IV, suits seeking redress for violations of Title I may be brought by private individuals without the approval of the Secretary of Labor. 29 U.S.C. § 412; *see Molina v. Union de Trabajadores de Muelles y Ramas Anexas*, 762 F.2d 166, 167 (1st Cir. 1985) ("Title I is enforceable in federal court through a private action filed by the aggrieved union members.").

As evidence that the UAW violated his rights under Title I, Davis points to the fact that the convention delegates acted in contravention of the UAW Constitution by failing to introduce the amendment to dissolve Region 2 at least three weeks in advance of the convention vote. He also complains that potential candidates from Region 2 were given inadequate time to challenge incumbent directors in the three reconstituted regions because elections for these positions were

held on the very same day that Region 2 was dissolved and its membership redistributed. Disregarding the fact that these arguments are equally applicable to the claim that Davis's secret candidacy for director of Region 2 also violated the UAW Constitution and Title I of the LMRDA, the allegations made by Davis do not establish that members of Region 2 were denied election-related privileges enjoyed by UAW members in other regions. Absent discrimination of this kind, Davis may not maintain an action under Title I. *See Calhoon v. Harvey*, 379 U.S. 134, 139 (1964) (finding that union members were not "discriminated against" for purposes of Title I because they were not denied a "right to vote or nominate which the union has granted to others").

This mismatch between the relief sought by Davis and the protections provided by Title I exists because Title I cannot support a cause of action that seeks to invalidate a previously conducted union election. *Local No. 82, Furniture & Piano Moving v. Crowley*, 467 U.S. 526, 541 (1984) (holding that "the exclusivity provision included in § 403 of Title IV plainly bars Title I relief when an individual union member challenges the validity of an election that has already been completed"). Although Davis purports to rely solely on Title I, the relief he seeks is available only under Title IV of the LMRDA because rescission of the challenged amendment would reinstate Region 2, with Davis as its director, and invalidate the three subsequent elections for director in the new regions.

Because "the substance of the claim is controlling," we must treat Davis's complaint as arising under Title IV of the LMRDA. *McGuire v. Grand Intl Div. of the Bhd. of Locomotive Eng'rs*, 426 F.2d 504, 508 (6th Cir.1970) ("If an individual member could bring suit by the simple expedient of framing a claim under Title I, where the substance of the claim falls under Title IV, [t]he comprehensive administra tive and procedural provisions of Title IV would be rendered

meaningless."). The district court was therefore correct in holding that it lacked subject matter jurisdiction over Davis's claims for postelection relief in the absence of a finding of probable cause by the Secretary of Labor.

III. CONCLUSION

For the reasons set forth above, we AFFIRM the judgment of the district court.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Civil No. 02-74211
Hon. John Feikens

WARREN DAVIS, DENNIS LAPSO, ROBERT WICKLINE, AND GREGG SHOTWELL,

Plaintiffs,

v.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW),

Defendant.

OPINION AND ORDER

Plaintiff Warren Davis filed suit against the United Auto Workers (UAW) challenging the legality of actions taken at a convention held in June 2002 under the Labor-Management Reporting and Disclosure Act (LMRDA). Defendant filed a motion to dismiss plaintiff's complaint on the grounds that this court lacks subject matter jurisdiction, and under 12(b)(6), claiming that the complaint failed to state a legally cognizable claim. Plaintiff filed a motion to file a second amended complaint.

Factual Background

Plaintiff served as director of Region 2 of the UAW from 1983 until June 6, 2002, when Region 2 was dissolved at a UAW convention in Las Vegas. One of the functions of the convention is to elect UAW officers, including the director of

each region. Prior to the convention, plaintiff had decided to retire and run for Congress. At the time of the convention he was 67, and by an unwritten rule of the Administrative Caucus, members generally did not run for office after the age of 65.

While at the convention, Davis had a change of heart. When he was nominated for director by the delegates of Region 2, he did not decline the nomination, and was elected on June 5, 2002. The following morning, the Administrative Caucus distributed a leaflet saying that Davis had violated the over-65 rule, lied to members about his intentions and denied them an honest election. The leaflet also indicated that the constitution committee was outraged, and would produce an amendment to article 10 section 21 of the constitution to break up Region 2 and distribute its members. Later the same day, Davis attended a meeting of the administrative caucus, where he was fired by the President of the UAW.

According to the UAW constitution, copies of all constitutional amendments to be considered at the convention must be submitted at least three weeks before the convention, and then considered by a constitution committee. Article 8, § 15-16. Despite the fact that it had not been submitted before the convention, the amendment dissolving Region 2 was overwhelmingly approved. Most of its former members were added to Region 2B, which raised its membership from 49,000 to 87,000. Plaintiff claims that the UAW has never before combined regions except where there was a vacancy in the directorship. Amended Complaint, ¶ 15.

Plaintiff claims that the convention amended article 10 section 21 to retaliate against Region 2 for electing Davis, and that such action violated 29 U.S.C. § 101(a)(1) and (2). Both plaintiff and defendant recognize in their briefs that plaintiff is bringing a claim under § 101 LMRDA, 29 U.S.C. § 411. Plaintiff seeks injunctive relief, that is, rescission of the amendment which dissolved Region 2.

Analysis

I. Rule 12(b)(6)

Defendant seeks a motion to dismiss under Fed.R.Civ.P. 12(b)(6) for failure to state a claim on which relief can be granted. Defendant claims that plaintiff's complaint should be dismissed because the grounds pleaded as motivation for the convention's merger are legally insufficient under the LMRDA to overturn the convention's decision. Plaintiff alleges that union officials proposed a constitutional amendment at the last minute in retaliation against Region 2 for exercising voting rights to elect Davis. In the alternative, plaintiff claims that the vote of the convention to redraw the boundaries of Region 2 was not meaningful and informed. Amended Complaint, ¶ 53.

This court need not reach the question of whether plaintiff has stated a claim upon which relief can be granted under 29 U.S.C. § 411. As discussed in detail below, the complaint must be dismissed for lack of subject matter jurisdiction.

II. Lack of Subject Matter Jurisdiction

Defendant moves to dismiss plaintiff's claim for lack of subject matter jurisdiction. Section 403 of Title IV of LMRDA, 29 U.S.C. § 483, provides that "[t]he remedy provided by this title for challenging an election already conducted shall be exclusive." Those remedies allow for jurisdiction in the district court only after three conditions are met:

> First, union members must exhaust internal union remedies. Then they must file a complaint with the Secretary of Labor. Section 402(a), 29 U.S.C. § 482(a). Finally, if the Secretary of Labor 'finds probable cause to believe that a violation . . . has occurred . . . he shall . . . bring a civil action . . .' Section 402(b), 29 U.S.C. § 482(b).

Radio-Electronics Officers Union, Dist. 3, NMEBA, AFL-CIO v. Radio Officers Joint Employment Committee, 811 F.Supp.

151, 156 (S.D.N.Y. 1993). Thus, this court lacks subject matter jurisdiction over claims related to an election already conducted, because there has been no finding of probable cause by the Department of Labor. *Id.*

Courts have repeatedly held that where post-election relief is sought, the exclusive remedy is with the Secretary of Labor. See *Molinda v. Union de Trabajadores de Muelles y Ramas Anexas, Local 1740, UTM-ILA*, 762 F.2d 166, 168 (1st Cir. 1985) (finding Title I claim did not "escape" the jurisdictional bar of LMRDA where claim required court to address validity of election); *Wolfson v. Newspaper and Mail Deliverers' Union of New York and Vicinity*, 713 F.Supp. 700 (S.D.N.Y. 1989) (dismissing claim because "essence" of contract dispute concerning the union's constitution dealt with post-election relief). It is not the way the claim is framed, but the substance of the claim which controls whether post-election relief is sought. *McGuire v. Grand International Division of the Brotherhood of Locomotive Engineers*, 426 F.2d 504, 508 (6th Cir. 1970) (finding that a claim that election proceedures violate the constitution and by-laws of the union constitutes a Title VI matter).

Plaintiff asserts that 29 U.S.C. § 483 is inapplicable because the complaint does not challenge an election, but raises a claim of unlawful retaliation. However, plaintiff has not pleaded a cause of action for discrimination in the sense that there is no allegation that other members were given privileges and voting rights which were denied to members of Region 2. Though the amendment dissolving Region 2 indirectly voided the results of the election of Davis as director of Region 2, this is not discrimination as contemplated by Title I of LMRDA.

In essence, the complaint challenges the propriety of a vote to amend the UAW constitution. The vote was taken as part of an election process and resulted in a re-run election. Despite plaintiff's characterization of the relief sought, rein-

statement of Region 2 would essentially validate the results of an election already conducted in which Davis was elected director. At the same time, this court would have to invalidate the post-amendment elections of successful candidates in the redrawn Regions 2B, 8 and 9. Such post-election relief must be sought exclusively with the Secretary of Labor in accordance with 29 U.S.C. § 483. The contemplated relief challenges an election already conducted, and thus, the court lacks subject matter jurisdiction pursuant to the limitations of Title IV of LMRDA. *Radio*, 811 F.Supp. at 155 (finding that because relief sought would either validate the election or the rerun election, the court lacked subject matter jurisdiction).

III. Second Amended Complaint

Plaintiff submitted a motion to file a Second Amended Complaint. Under Fed.R.Civ.P. 15 (a), "leave [to amend] shall be freely given when justice so requires." However, justice does not require leave to amend when the court finds "that the amended complaint suffer [s] from the same infirmities as the original complaint and thus would not withstand a motion to dismiss . . ." *Keweenaw Bay Indian Community v. State of Michigan*, 11 F.3d 1341, 1348 (6th Cir. 1993). The new claim in plaintiff's proposed Second Amended Complaint alleges that the convention delgates amended the UAW constitution:

> without a meaningful and informed vote of the convention delegates, and in violation of existing UAW rule, practices, and constitutional provisions governing the convention and the amendment process.

Second Amended Complaint, ¶ 1. However, as discussed above, the Secretary of Labor has exclusive jurisdiction over an election already conducted. Because any new claims related to the June 2002 election would be preempted by LMRDA, leave to amend would be futile in this case.

Conclusion

Thus, this court lacks subject matter over the case because plaintiff's claims are preempted by the exclusive jurisdiction of the Secretary of Labor under 29 U.S.C. § 483. Defendant's Motion to Dismiss is hereby GRANTED.

IT IS SO ORDERED.

Date: August 01, 2003

/s/ JOHN FEIKENS
John Feikens
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

[Filed Nov. 6, 2003]

Civil No. 02-74211
Hon. John Faikens

WARREN DAVIS, *et al.*,
Plaintiffs,

v.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW),
Defendant.

OPINION AND ORDER

Plaintiff's motion for reconsideration is DENIED.

IT IS SO ORDERED.

/s/ John Feikens
JOHN FEIKENS
United States District Judge

Date: Nov. 6, 2003

APPENDIX D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No 02-74211
Hon John Feikens
Magistrate Judge R. Steven Whalen

WARREN DAVIS, DENNIS LAPSO, ROBERT WICKLINE, AND GREGG SHOTWELL,

Plaintiffs,

v.

UNITED AUTOMOBILE WORKERS OF AMERICA,

Defendant.

ELLIS BOAL (P10913)
9330 Boyne City Road
Charlevoix, MI 49720
231/547-2626

RONALD J. REOSTI (P19368)
Reosti James & Sirlin PC
925 Ford Building
Detroit, MI 48226-3988
313/962-2770

Counsel for Plaintiffs

Daniel Sherrick (P37171)
Michael Nicholson (P33421)
William A. Wertheimer (P26275)
8000 E Jefferson Avenue
Detroit, MI 48214
313/926-5216

Counsel for UAW

SECOND AMENDED COMPLAINT

INTRODUCTION

1. This is a complaint for injunctive relief arising out of undemocratic action by defendant United Auto Workers ("UAW") at its recent convention in Las Vegas. **The** convention amended **the UAW** constitution in June 2002 to eliminate Region 2, one of its administrative arms or subordinate bodies, solely to punish the region because it had elected plaintiff Davis as its director the day before. **The amendment was accomplished without a meaningful and informed vote of the convention delegates, and in violation of existing UAW rules, practices, and constitutional provisions governing the convention and the amendment process.**

2. Plaintiffs Davis, Lapso, and Wickline live in Bay Village, Parma, and Middleburgh Heights respectively in the northern district of Ohio. Plaintiff Shotwell lives in Grand Rapids in the western district of Michigan. Defendant is an international labor organization headquartered in Detroit in this district.

3. This court has federal-question jurisdiction under 28 USC 1337, **and 29 USC 185(a)** and 401 et seq.

BACKGROUND FACTS

4. The UAW is governed by a constitution and an ethical practices code. **Complaint** exhibit 1. Among other things they provide:

- Powers of administration are vested first in a quadrenniel convention, then between conventions in an international executive board ("IEB"), and finally between IEB meetings in an international president. (Article 7 section 1)

- The UAW is divided into geographic regions nationally. Each region is headed by an elected director. On the vacancy of of any regional directorship the IEB is empowered under certain circumstances to determine that the region will be combined with another contiguous region. (Article 10 section 21)
- One of the functions of the convention is to elect UAW officers, including the director of each region. (Article 8 section 2, article 10 sections 1 and 21)
- A UAW object is to unite all employees under its jurisdiction in one organization regardless of age. (Article 2 section 2)
- Members can be charged and tried and punished in union trials for unbecoming conduct or violations of the constitution. (Article 31)
- Copies of all constitutional amendments to be considered by the convention must be sent to the international secretary-treasurer not later than three weeks prior to the date set for the convention. A constitution committee, selected from among convention delegates by the IEB, is to assemble at least two weeks before the convention start to take up all recommendations concerning changes or additions to the constitution submitted by international officers, the IEB, or local unions to act thereon. The committee also has authority to originate constitutional amendments. (Article 8 sections 15-16)
- Delegates to conventions are entitled to base their judgments and their votes on facts and considerations presented to them at conventions—material which may not have been previously within the knowledge of themselves or the membership of the locals which they represent. (Article 8 section 25, article 31 section 1 IEB interpretation 2)

- Members may appeal actions thought to violate the constitution or ethical practices code. Appeals terminate in a decision of defendant's Public Review Board ("PRB") which has power to interpret the constitution and ethical practices code. The PRB is a group of impartial persons of good repute not working under defendant's jurisdiction or employed by defendant or its subordinate bodies. Members must exhaust remedies and all appeals fully before going to a civil court for redress. (Articles 32, 33, ethical practices code)

5. Centered in Cleveland, Region 2 covered 47 locals in 36 counties in eastern Ohio, western Pennsylvania, and West Virginia. With 41,000 members it was the smallest of the UAW's 12 regions. Six others ranging from 43,000 to 51,000 were nearly as small. Before the events of this case the largest had 85,000 members.

6. Plaintiff Davis has been a UAW member since 1954. He served in various local union offices, and in 1970 became assistant director of Region 2. In 1983 delegates from the region elected him as director, and he served in that post until the region was dissolved on June 6, 2002.

7. The functions of the Region 2 director were to supervise contract negotiation and administration, organizing, and political action.

8. A regional assistant director helped the director in all the foregoing.

9. During the 19 years he served as director plaintiff Davis was a member of the Administration Caucus, a long-standing caucus or party of individuals within the union.

10. Plaintiffs Wickline and Shotwell were delegates to the June 2002 convention in Las Vegas. Wickline was elected by members of Local 1005 in Parma which is in Region 2. He is

retired and of age 66 at the time of the convention. Shotwell was elected by members of Local 2151 in Coopersville which is in Region 1D. He is an active member employed at Delphi Automotive Systems in Coopersville, and of age 51 at the time of the convention.

11. Plaintiff Lapso is a retired member of Local 1250 located in Brook Park in Region 2, and was aged 71 at the time of the convention.

12. With the exception of one regional director for a short period in the late 1980's, every member of the UAW's IEB has been a member of the Administration Caucus.

13. Because of this overlap, as the PRB has said, in defendant UAW the lines of demarcation between the Administration Caucus and the IEB are blurred as in some national governments, and the Administration Caucus therefore controls the union and the selection of its officials.

14. The Administration Caucus has long had a rule that ~~that~~ none of its members would run for IEB office after his or her 65th birthday. Though an Administration Caucus member, plaintiff had never liked the mandatory retirement rule and never voted for it.

15. The UAW has heretofore never combined regions except where there was a vacancy in the directorship of at least one of the regions. At the time of the convention there were vacancies in contiguous Regions 1C and 1D in Michigan.

16. The UAW has heretofore never combined regions without pre-convention discussion among the affected membership.

17. Being of age 67 plaintiff had initially decided to retire from the UAW at the convention and pursue a run for congress.

18. The IEB unanimously endorsed his congressional bid in May **2002**, saying he would be a forceful advocate and a reliable fighter for working families, and that the union would work very hard to elect him in November.

19. Before the convention the Administration Caucus and IEB had decided not to recommend the dissolution of Region 2 even though Davis said he was retiring.

THE CONVENTION: JUNE 5, **2002**

20. In February 2002, in a convention call, the UAW summoned elected delegates from around the country to the June 2002 convention, one of whose purposes was to elect UAW officers, including the director of Region 2.

21. The convention adopted rules, including a provision that the rules could only be amended or suspended by a 2/3 vote, and designating "revised Robert's Rules of Order" as the guide on all matters growing out of the convention not therein provided.

22. Robert's revised rules of order include provisions that:

- **members have a right to appear at committee meetings and present their views on a subject before the committee at a time scheduled by the committee,**
- **distinction is made between committee action on a paper that is referred to the committee and a paper that originates in the committee,**
- **committee reports should be signed by the committee members concurring in it unless it is of little importance in which case it may be signed by the chairperson alone, and**

- **a report can only contain what was agreed to by a majority at a noticed meeting attended by a quorum, unless a meeting was impracticable and support for the report was unanimous.**

23. All amendments and resolutions timely submitted were printed in a booklet and distributed to delegates at the beginning of the convention.

24. At the convention Davis changed his mind and decided to run for re-election as director of Region 2.

25. A convention meeting was held on June 5 attended by convention delegates from Region 2. The primary purpose of the meeting was to elect the director. Plaintiffs Davis and Wickline attended. Davis and his assistant Rich Vadovski were nominated, but Vadovski declined.

26. During debate delegates asked Davis about his career intentions, in light of his simultaneous runs for congress and regional director. He answered if he were elected to congress he would resign the UAW directorship and throw his support to Vadovski, and if he lost he would serve out a director's full 4-year term.

27. Plaintiff's change of heart violated no convention or union rule. The delegates enthusiastically elected him by acclamation. No appeals were filed. The auditor certified the result. **Complaint** exhibit 2.

28. Other regions held similar meetings at the same time. Every region elected a director by acclamation. There were no contested elections at the convention.

29. Davis and his wife went out to celebrate. On returning to his room he picked up three telephone messages telling him to attend an IEB meeting, which by the time he received the message would have been over.

30. In fact the IEB did not meet on June 5. Instead the senior leadership of the Administration Caucus met **at which time a proposal was drafted to amend article 10 section 21 of the constitution** to eliminate region 2 and distribute its members among three other regions.

THE CONVENTION: JUNE 6, **2002**

31. On June 6 at 7:00 am **Davis** called UAW President Stephen Yokich. Yokich was irate about **Davis's** election. Among other things **Yokich** said, referring to the Administration Caucus's over-65 rule, "If I let you do this then everyone will want to do it."

32. The Administration Caucus produced a leaflet saying Davis had violated the over-65 rule, lied to members about his intentions, and denied them an honest election. The leaflet added that Region 2 was the union's smallest. It said delegates had the right to rise in outrage. It said the constitution committee was just as outraged and "will" report out an amendment to article 10 section 21 to break up Region 2 and distribute it to other regions. **Complaint** exhibit 3.

33. No member charged Davis with unbecoming conduct or a violation of the constitution for his actions which the Administration Caucus leaflet claimed were outrageous.

34. Some or all members of the constitution committee met on the morning of June 6. **Complaint** exhibit 3 was in the room when they arrived. The recording secretary took no minutes. ~~and~~ It was **an informal meeting**, not an official committee meeting.

35. Also on the morning of June 6, plaintiff Davis attended a meeting of 300-400 members of the Administration Caucus. He was allowed to speak from the podium, at the end of which President Yokich fired Davis from the Administration Caucus.

36. Plaintiffs did not learn of the planned amendment until the Administration Caucus meeting the morning of June 6 where Davis saw a copy of **complaint** exhibit 3. Plaintiffs accordingly had no chance to compose, print, and distribute a counter-leaflet opposing important and untrue statements made in **complaint** exhibit 3.

37. The convention convened at 11:10 am, an hour and 10 minutes after the scheduled start time.

38. **Claiming to speak o**n behalf of the constitution committee, one of its members moved for the amendment of article 10 section 21 to break up Region 2 and distribute it to contiguous regions 2B, 8, and 9. Most of the members would go to Region 2B, centered in Toledo. **Complaint** exhibit 4.

39. The amendment was not printed in the booklet distributed the first day, and was not timely submitted under article 8 sections 15-16.

40. During debate various arguments were advanced for and against the amendment. The question was called and the amendment overwhelmingly approved. Plaintiff Shotwell attempted to raise a point of order after the vote, saying the amendment to article 10 was not submitted timely and should be invalidated. The convention laughed.

41. During floor debate on the amendment delegates attacked Davis for violating a "commitment of honor that after 65 you won't run again," for acting "for his own personal gain," and for "treachery in high places." Davis stood by his seat on the podium with his hand up in sight of the chair, but the chair refused to recognize him. Plaintiffs accordingly had no chance to oppose important and untrue statements made on the floor.

42. Because of the amendment the membership in Region 2B rose from 49,000 to 87,000, to become the largest region. Region 8 added a few hundred to its former 50,000. Region 9

rose from 43,000 to 45,000. This left Regions 1C and 1D as the smallest regions with 48,000 and 47,000 members.

43. The chairman of the PRB then addressed the convention.

44. The convention adjourned. Meetings were held of the adjusted regions 2B, 8, and 9 in which new nominations and elections of directors occurred.

45. Delegates of the former Region 2 attending these meetings were not familiar with the records and qualifications of the candidates from the old regions 2B, 8, and 9 who were running in the new regions. Similarly delegates in the old Regions 2B, 8, and 9 were not familiar with the records and qualifications of any candidate from the former Region 2 who might have wanted to run.

46. Again, all candidates ran unopposed and were elected by acclamation. The convention re-convened and certified all the winning candidates.

47. The convention did not merge Regions 1C and 1D, nor did the Administration Caucus or IEB recommend that course.

48. The late start and the adjournment for elections disrupted the business of the convention on June 6.

POST-CONVENTION EVENTS

49. Since the convention the duties and functions of the former director and assistant director have been transferred to personnel in other offices, resulting in disruption to operations and in performance of the functions they formerly handled.

50. On June 17, **2002,** Davis filed an appeal with the PRB concerning the amendment to article 10 section 21.

51. On June 25, **2002**, defendant objected to the PRB's jurisdiction over the appeal.

~~48. On September 10 and 23 and October 10 Davis submitted further evidence and argument in support of the appeal.~~

~~49. On January 16 and February 10 respectively defendant and plaintiff submitted further argument to the PRB. On February 15, the PRB met on the matter without the parties present.~~

~~49. In light of the UAW's jurisdictional objection there is no indication whether or when the PRB will reach the merits of the appeal.~~

52. On April 15, 2003, the PRB dismissed Davis's appeal, holding that under the ethical practices code it lacked jurisdiction of political issues. The PRB did not determine Davis's claims which were based on the UAW provisions and practices which govern the amendment and convention process.

CLAIMS

53. The convention amended article 10 section 21 to retaliate against Region 2 for electing Davis.

54. The convention amended article 10 section 21 to enforce an Administration Caucus rule against candidates running for UAW office who are over age 65 .

55. Without factual background delegates' right to vote on the amendment was not meaningful and informed.

56. The amendment process violated various provisions of the UAW constitution, convention rules, and convention call, and UAW past practices.

57. Defendant's action violated 29 USC **41**1(a)(1) and (2), **and 185(a).**

RELIEF SOUGHT

58. Plaintiffs ask the court to ~~find that defendant's action violated the law and~~ order rescission of **complaint** exhibit 4, the amendment to article 10 section 21.

59. Plaintiffs ask that the court award attorney fees, and any other relief it thinks just.

Respectfully submitted,

ELLIS BOAL (P10913)
9330 Boyne City Road
Charlevoix, MI 49720
231/547-2626 (phone)
231/547-2828 (fax)

RONALD J. REOSTI (P19368)
REOSTI JAMES & SIRLIN PC
925 Ford Building
Detroit, MI 48226-3988
313/962-2770 (phone)
313/962-9384 (fax)

Dated:

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 04-3131

WARREN DAVIS,
Plaintiff-Appellee,

v.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW); UAW REGION 2B; RONALD GETTELFINGER; AND LLOYD MAHAFFEY,
Defendants-Appellants.

Appeal from the United States District Court for the
Northern District of Ohio at Cleveland.
No. 03-01311—Kathleen McDonald O'Malley,
District Judge.

Argued: September 22, 2004
Decided and Filed: December 15, 2004

OPINION

RONALD LEE GILMAN, Circuit Judge. At the 2002 Constitutional Convention of the International Union of the United Automobile Workers of America (UAW), convention delegates adopted an amendment to the UAW Constitution that dissolved one of the UAW's geographic regions and redistributed its members among three neighboring regions. The amendment also had the effect of setting aside Warren Davis's reelection as a regional director, a result that Davis contends was motivated by illegal age discrimination. Davis

therefore sued the UAW and two of its officers, Ronald Gettelfinger and Lloyd Mahaffey, in Ohio state court, alleging state-law claims of age discrimination, conspiracy to discriminate on the basis of age, wrongful discharge, retaliation, libel, and slander.

The UAW removed the case to the United States District Court for the Northern District of Ohio, asserting that Davis's state-law claims sought postelection relief and were therefore preempted by Title IV of the federal Labor-Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. §§ 481-83 (2004). Finding that there was no federal preemption, the district court remanded the case to the Ohio state court. For the reasons set forth below, we REVERSE the district court's remand of Davis's state-law claims and REMAND with instructions to dismiss the claims on the basis that they are all precluded by the LMRDA.

I. BACKGROUND

A. Factual background

Davis served for 19 years as an elected member of the governing board of the UAW. After deciding to run for Congress in 2002, Davis announced his intention to vacate his office in the UAW and endorsed his assistant director for his soon-to-be-vacant position. The election for the office, for which Davis's assistant was the sole candidate, was held at the UAW's Constitutional Convention in June of 2002. Due to an apparent last-minute change of heart, however, Davis arranged for his assistant to nominate Davis and then withdraw from the race, resulting in Davis winning the election unopposed.

During his many years of service with the UAW, Davis had been part of an unofficial caucus of politically powerful members who adhered to an informal agreement not to seek elective office after reaching 65 years of age. Angered by

Davis's surprise tactics at the convention and his acceptance of an elected position at the age of 67, several members of the unofficial caucus issued a press release calling upon the UAW convention delegates to eliminate Davis's region, redistribute its members among three other regions, and hold new elections. This proposal was adopted by the UAW Constitutional Convention, which promptly dissolved Davis's region the day after his reelection.

B. Procedural background

Davis sued the UAW in the United States District Court for the Eastern District of Michigan, alleging a number of federal claims related to the UAW's elimination of his region and the resulting termination of his elected office. *Davis v. UAW*, 274 F. Supp. 2d 922 (E.D. Mich. 2003). The court dismissed the case after finding that it lacked subject matter jurisdiction over Davis's election-related claims because there had been no finding of probable cause by the Secretary of Labor as required by Title IV of the LMRDA, 29 U.S.C. §§ 481-83. The Michigan district court's dismissal of Davis's case was upheld by this court on appeal. *Davis v. UAW*, 2004 WL 2812623 (6th Cir. Dec. 9, 2004).

In the present action, Davis has sued the UAW and two of its officers in Ohio state court, advancing state-law claims of age discrimination, conspiracy to discriminate on the basis of age, wrongful discharge, retaliation, libel, and slander, all arising out of the events at the Convention. These state-law causes of action are premised on the assertion in his complaint that he "was successfully elected as Director" at the UAW Convention and that the UAW's subsequent actions in reorganizing his region improperly deprived him of his rightful office.

The UAW removed the case to the district court, offering two separate grounds in support of removal. First, the UAW contended that, in deciding Davis's state-law claims, the court

would be required to interpret the UAW Constitution, thus making the action completely preempted by the Labor Management Relations Act (LMRA), 29 U.S.C. § 185 (2004). Second, the UAW asserted that the adjudication of Davis's state-law claims would necessarily require a determination regarding the validity of the UAW election, an exclusively federal question under Title IV of the LMRDA.

The district court remanded the action to the state court after concluding that it lacked subject matter jurisdiction over the case. In so doing, it found that the UAW's federal preemption claims based on the LMRA were without merit, a decision that the UAW has not challenged on appeal. The district court also rejected the UAW's contention that Davis's state-law claims were preempted by Title IV of the LMRDA, causing it to remand the case back to the state trial court. This timely appeal followed.

II. ANALYSIS

A. Jurisdiction to review the district court's remand order

A threshold question in this case is whether appellate jurisdiction exists to review the remand order of the district court. As a general rule, remand orders constitute final judgments for purposes of federal appellate jurisdiction and may be reviewed unless some independent bar to appellate review exists. *Quakenbush v. Allstate Ins. Co.*, 517 U.S. 706, 712 (1996) (establishing that remand orders are "immediately appealable under §1291 because they conclusively determine a disputed question that is completely separate from the merits of the action") (quotation marks omitted).

Davis contends that we are barred by 28 U.S.C. § 1447(d) from hearing the UAW's appeal from the district court's remand order. Section 1447(d) states that "[a]n order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise . . . ." Despite the sweeping language of this section, however, "[t]he Supreme Court

stated long ago . . . that the § 1447(d) proscription is not as broad as it seems." *Baldridge v. Kentucky-Ohio Trans., Inc.*, 983 F.2d 1341, 1343 (6th Cir. 1993).

One significant limitation on the reach of § 1447(d) was explored by this court in *Long v. Bando Manufacturing of America, Inc.*, 201 F.3d 754 (6th Cir. 2000), where appellate review of a remand order was sought. Although acknowledging that "the plain language of 28 U.S.C. § 1447(d) suggests that remand orders concerning cases removed pursuant to 28 U.S.C. § 1441 are never reviewable," *Long*, 201 F.3d at 758, this court concluded that the Supreme Court's ruling in *Thermtron Products, Inc. v. Hermansdorfer*, 423 U.S. 336 (1976), dictated that "§§ 1447(c) and (d) must be read together . . . ." *Long*, 201 F.3d at 758. Section 1447(c) directs the district court to remand a removed case "[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction . . . ." After reading § 1447(d) in conjunction with (c), the court in *Long* concluded "that § 1447(d) prohibits review only of remand orders issued pursuant to a finding, under § 1447(c), that the district court lacked subject matter jurisdiction." 201 F.3d at 758.

In determining "the nature and scope of' remand under § 1447(c), this court has "interpreted that provision as necessarily tied to a temporal reference point, namely, the time of removal." *Van Meter v. State Farm Fire & Cas. Co.*, 1 F.3d 445, 450 (6th Cir. 1993). For a case to be deemed remanded pursuant to § 1447(c), the district court must find that subject matter jurisdiction was lacking at the time of removal and then remand on that basis; otherwise, § 1447(d) will not prohibit appellate review of the district court's remand order. *See First Nat 'l Bank of Pulaski v. Curry*, 301 F.3d 456, 460 (6th Cir. 2002) (stating that "§ 1447(d) means only that a remand order is unreviewable on appeal when the case was remanded based on the district court's conclusion that it lacked subject matter jurisdiction over the removed case *at*

the time of removal") (emphasis in original). Where a district court had proper jurisdiction at the time of removal, but events occurring after removal make remand to the state courts appropriate, § 1447(d) does not bar appellate review of the district court's remand order. *See Letherer v. Alger Group, L.L. C.*, 328 F.3d 262 (6th Cir. 2003) (exercising appellate review where the district court remanded after concluding that a stipulation between the parties had obviated the need to address the federal question); *First Nat'l Bank of Pulaski*, 301 F.3d at 459 (reviewing a remand order where the district court had resolved the federal claims and then remanded the case after finding that it "lacked jurisdiction to adjudicate the remaining state claims").

We conclude that § 1447(d) does not bar our appellate review of the remand order in the present case because the district court possessed subject matter jurisdiction at the time of removal. The UAW removed this case to the district court, arguing that there was federal question jurisdiction over Davis's claim for reinstatement because the claim constituted a request for postelection relief under the exclusive jurisdiction of the LMRDA. Only after finding that Davis had "concede[d] that the remedy of reinstatement [wa]s not available to him" did the district court conclude that the case must be remanded because subject matter jurisdiction had been lost. The district court found that Davis had expressed his intent to abandon this claim in his memorandum supporting his remand motion, which was filed over a month after the case was removed from the state court.

On this point the district court may have been mistaken, however, because Davis did not amend his complaint to remove his claim for reinstatement and has made clear his intention to preserve the claim. Regardless, the district court plainly relied on Davis's alleged concession in remanding the case, finding that it "goes a long way toward mooting the defendants' argument" of preemption by the LMRDA.

Because the district court remanded this case only after finding that a post-removal event had deprived it of subject matter jurisdiction, we may exercise appellate jurisdiction over the district court's remand order. *See First Nat'l Bank of Pulaski*, 301 F.3d at 460 (stating that "a remand order is reviewable on appeal when the district court concludes that the action was properly removed but that the court lost subject matter jurisdiction at some point post-removal").

B. Federal preemption by Title IV of the LMRDA

1. Davis's state-law claims for age discrimination, conspiracy, wrongful termination, and retaliation

The UAW contends that remand was improper because Davis's complaint raised exclusively federal questions regarding the validity of the union election, the UAW's tactics therein, and the appropriateness of Davis's reinstatement as a remedy. Specifically, the UAW argues that Davis's claims of age discrimination, conspiracy, wrongful termination, and retaliation all seek postelection relief. Title IV of the LMRDA mandates that challenges to a previously conducted union election may only be brought by the Secretary of Labor. 29 U.S.C. § 483; *Trbovich v. United Mine Workers*, 404 U.S. 528, 533 (1972).

The district court's application of the LMRDA is reviewed de novo. *Argentine v. United Steel Workers, AFL-CIO*, 287 F.3d 476, 482 (6th Cir. 2002). In remanding the present action, the district court concluded that Davis's claims were not preempted by the LMRDA because the indisputably federal questions of "whether Davis was elected" and "whether the defendants eliminated Davis's position" need not be answered in order to adjudicate Davis's claims. We respectfully disagree. For instance, it is difficult to imagine how the state court could adjudicate whether Davis was wrongfully terminated without first finding that he held a position in the UAW. This apparent difficulty is confirmed by

the fact that the district court felt compelled to address the validity of the UAW election in its remand order, noting that "the Union does not seriously assert that Davis was not elected" and that "the defendants have never denied (and have no basis for denying) that Davis was elected pursuant to a regular and orderly process provided for under the Union Constitution." To the contrary, the UAW vigorously contests the validity of Davis's election.

We agree with the district court's conclusion that the preemptive scope of the LMRDA is narrow, but disagree that Davis's claims are not within that narrow scope. For example, the district court held that Davis's request for damages in the form of back pay "would not necessarily imply, as defendants assert, that one or more of the Union's election results were invalid." But the cases relied upon by the district court do no more than support the proposition that the LMRDA permits an employee to file an age discrimination claim for back wages when improperly *discharged* by the union; they offer no authority for the court's holding that an employee is not preempted when filing a similar claim in the context of an allegedly unfair union *election*.

Conversely, the two other courts that have addressed this issue in the context of a union election have held that the LMRDA preempts such a claim because "[p]laintiffs can only prevail on . . . the claim for back pay[] if the court determines that the election was improper." *Calciano v. United Bhd. of Carpenters & Joiners*, No. 92-5715, 1993 WL 138827 at *4 (S.D.N.Y. Apr. 23, 1993); *see also Bermingham v. Castro*, No. 98-15859, 1999 WL 644342 at *2 (9th Cir. Aug. 24, 1999) (holding that damages in the form of "lost income . . . effectively challenge the validity of the election already conducted, which is an area in which Title IV provides the exclusive remedy").

Davis's state-law claims in question, including his requested remedy of back pay, logically hinge on his assertion

that he was lawfully elected. As the district court in Michigan correctly concluded, claims for postelection relief are relegated to the exclusive jurisdiction of the Secretary of Labor by the LMRDA. *Davis v. UAW*, 2004 WL 2812623 (6th Cir. Dec. 9, 2004). Davis's claims for age discrimination, conspiracy, wrongful termination, and retaliation should therefore be dismissed by the district court for lack of subject matter jurisdiction.

2. Davis 's state-law claims for libel and slander

Davis's remaining causes of action for libel and slander arise from a press release issued at the UAW Convention, wherein certain delegates alleged that Davis lied about his plans for retirement and employed an "immoral, deliberate, and fraudulent scheme to deny an honest election to the membership." Similar sentiments were also vocalized by some of the delegates shortly after the election.

In order for Davis to establish a prima facie case for libel or slander, he must show that the delegates' statements regarding the impropriety of his actions in the election were false. *See Celebrezze v. Dayton Newspapers, Inc.*, 535 N.E.2d 755, 759 (Ohio Ct. App. 1988) (holding that falsity is an essential element of an Ohio common law defamation claim). To determine whether the statements are false, however, the validity of the election and Davis's tactics therein must be examined.

But this inquiry has already been conducted by the Secretary of Labor in responding to Davis's Title IV complaint. After acknowledging that some delegates had "privately published and distributed a pamphlet condemning [Davis's] stratagem and purposes," the Secretary nevertheless found that the delegates' actions at the Convention had not violated Davis's election-related rights. Because Davis's claims for libel and slander would necessarily require a court to revisit this finding, these claims are also preempted by

Title IV of the LMRDA. *Cf. Henegar v. Banta*, 27 F.3d 223, 226-27 (6th Cir. 1994) (holding that the Railway Labor Act "preempts state law claims based on libel and slander" because the "court would inevitably have to interpret the terms of the collective bargaining agreement," a task within the exclusive jurisdiction of the National Railroad Adjustment Board); *Miller v. Norfolk & W. Ry. Co.*, No. 89-4101, 1990 WL 163302, at *5 (6th Cir. Oct. 25, 1990) (unpublished) (finding libel and slander claims preempted by the Railway Labor Act where, "[a]lthough defamation was not an issue before the [administrative] board," the defamation claim was "based upon a matrix of facts that [wa]s inextricably intertwined with the collective bargaining agreement").

III. CONCLUSION

For all of the reasons set forth above, we REVERSE the district court's remand of Davis's state-law claims and REMAND with instructions to dismiss the claims on the basis that they are precluded by the LMRDA.

APPENDIX F

STATUTES AND REGULATION INVOLVED

L.M.R.A. Section 301(a), 29 U.S.C. § 185(a), states:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

L.M.R.D.A. Section 101(a)(1), 29 U.S.C. § 411(a)(1), states:

> Equal rights
>
> Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

L.M.R.D.A. Section 101(a)(2), 29 U.S.C. § 411(a)(2), states:

> Freedom of speech and assembly
>
> Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *Provided,* That nothing herein shall be construed to impair the right

of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

L.M.R.D.A. Section 102, 29 U.S.C. § 412, states:

Any person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located.

L.M.R.D.A. Section 401, 29 U.S.C. § 481(a) - (g), states:

(a) Officers of national or international labor organIzations; manner of election

Every national or international labor organization, except a federation of national or international labor organizations, shall elect its officers not less often than once every five years either by secret ballot among the members in good standing or at a convention of delegates chosen by secret ballot.

(b) Officers of local labor organizations; manner of election

Every local labor organization shall elect its officers not less often than once every three years by secret ballot among the members in good standing.

(c) Requests for distribution of campaign literature; civil action for enforcement; jurisdiction; inspection of membership lists; adequate safeguards to insure fair election Every national or international labor organization, except a federation of national or international labor

organizations, and every local labor organization, and its officers, shall be under a duty, enforceable at the suit of any bona fide candidate for office in such labor organization in the district court of the United States in which such labor organization maintains its principal office, to comply with all reasonable requests of any candidate to distribute by mail or otherwise at the candidate's expense campaign literature in aid of such person's candidacy to all members in good standing of such labor organization and to refrain from discrimination in favor of or against any candidate with respect to the use of lists of members, and whenever such labor organizations or its officers authorize the distribution by mail or otherwise to members of campaign literature on behalf of any candidate or of the labor organization itself with reference to such election, similar distribution at the request of any other bona fide candidate shall be made by such labor organization and its officers, with equal treatment as to the expense of such distribution. Every bona fide candidate shall have the right, once within 30 days prior to an election of a labor organization in which he is a candidate, to inspect a list containing the names and last known addresses of all members of the labor organization who are subject to a collective bargaining agreement requiring membership therein as a condition of employment, which list shall be maintained and kept at the principal office of such labor organization by a designated official thereof. Adequate safeguards to insure a fair election shall be provided, including the right of any candidate to have an observer at the polls and at the counting of the ballots.

(d) Officers of intermediate bodies; manner of election

Officers of intermediate bodies, such as general committees, system boards, joint boards, or joint councils, shall be elected not less often than once every four years

by secret ballot among the members in good standing or by labor organization officers representative of such members who have been elected by secret ballot.

(e) Nomination of candidates; eligibility; notice of election; voting rights; counting and publication of re sults; preservation of ballots and records

In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 of this title and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. Not less than fifteen days prior to the election notice thereof shall be mailed to each member at his last known home address. Each member in good standing shall be entitled to one vote. No member whose dues have been withheld by his employer for payment to such organization pursuant to his voluntary authorization provided for in a collective bargaining agreement shall be declared ineligible to vote or be a candidate for office in such organization by reason of alleged delay or default in the payment of dues. The votes cast by members of each local labor organization shall be counted, and the results published, separately. The election officials designated in the constitution and bylaws or the secretary, if no other official is designated, shall preserve for one year the ballots and all other records pertaining to the election. The election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this subchapter.

(f) Election of officers by convention of delegates; manner of conducting convention; preservation of records

When officers are chosen by a convention of delegates elected by secret ballot, the convention shall be conducted in accordance with the constitution and bylaws of the labor organization insofar as they are not inconsistent with the provisions of this subchapter. The officials designated in the constitution and bylaws or the secretary, if no other is designated, shall preserve for one year the credentials of the delegates and all minutes and other records of the convention pertaining to the election of officers.

(g) Use of dues, assessments or similar levies, and funds of employer for promotion of candidacy of person

No moneys received by any labor organization by way of dues, assessment, or similar levy, and no moneys of an employer shall be contributed or applied to promote the candidacy of any person in any election subject to the provisions of this subchapter. Such moneys of a labor organization may be utilized for notices, factual statements of issues not involving candidates, and other expenses necessary for the holding of an election.

L.M.R.D.A. Section 402, 29 U.S.C. § 482, states:

(a) Filing of complaint; presumption of validity of challenged election

A member of a labor organization—

(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or

(2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation, may file a complaint with

the Secretary within one calendar month thereafter alleging the violation of any provision of section 481 of this title (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

(b) Investigation of complaint; commencement of civil action by Secretary; jurisdiction; preservation of assets

The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this subchapter has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of this subchapter and such rules and regulations as the Secretary may prescribe. The court shall have power to take such action as it deems proper to preserve the assets of the labor organization.

(c) Declaration of void election; order for new election; certification of election to court; decree; certification of result of vote for removal of officers

If, upon a preponderance of the evidence after a trial upon the merits, the court finds—

(1) that an election has not been held within the time prescribed by section 481 of this title, or

(2) that the violation of section 481 of this title may have affected the outcome of an election, the court shall declare the election, if any, to be void and direct the conduct of a new election under supervision of the Secretary and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization. The Secretary shall promptly certify to the court the names of the persons elected, and the court shall thereupon enter a decree declaring such persons to be the officers of the labor organization. If the proceeding is for the removal of officers pursuant to subsection (h) of section 481 of this title, the Secretary shall certify the results of the vote and the court shall enter a decree declaring whether such persons have been removed as officers of the labor organization.

(d) Review of orders; stay of order directing election

An order directing an election, dismissing a complaint, or designating elected officers of a labor organization shall be appealable in the same manner as the final judgment in a civil action, but an order directing an election shall not be stayed pending appeal.

L.M.R.D.A. Section 403, 29 U.S.C. § 483, states:

No labor organization shall be required by law to conduct elections of officers with greater frequency or in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by this subchapter. Existing rights and remedies to enforce the constitution and bylaws of a labor organization with respect to elections prior to the conduct thereof shall not be affected by the provisions of this subchapter. The remedy provided by this subchapter for challenging an election already conducted shall be exclusive.

L.M.R.D.A. Section 603, 29 U.S.C. § 523(a), states:

> (a) Except as explicitly provided to the contrary, nothing in this chapter shall reduce or limit the responsibilities of any labor organization or any officer, agent, shop steward, or other representative of a labor organization, or of any trust in which a labor organization is interested, under any other Federal law or under the laws of any State, and, except as explicitly provided to the contrary, nothing in this chapter shall take away any right or bar any remedy to which members of a labor organization are entitled under such other Federal law or law of any State.

29 C.F.R 452.14 states:

> The initial selection of officers by newly formed or merged labor organizations is not subject to the requirements of Title IV.[15] Such labor organizations may have temporary or provisional officers serve until a regular election subject to the Act can be scheduled. An election under all the safeguards prescribed in these regulations must be held within a reasonable period after the organization begins to function. What would be a reasonable time for this purpose depends on the circumstances, but after the formation or consolidation of the labor organization, a regular election subject to Title IV may not be deferred longer than the statutory period provided for that type of organization. However, when a pre-existing labor organization changes its affiliation without substantially altering its basic structure or identity the terms of its officers may not be extended beyond the maximum period specified by the Act for the type of labor organization involved.
>
> 15. However, the other provisions of the Act are applicable immediately upon such formation or merger.